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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1129

MARIE HARNOIS,

Petitioner,

vs.

HUBERT A. HARNOIS,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

PAGE

Foreword 1

Reasons Why Petition for Writ of Certiorari should be Denied:

1. No federal question was raised or determined by the State Courts below as required by Rule 19, Par. 1(a) of the Supreme Court Rules 2

2. The Petition for Certiorari does not comply with Rule 23(f) of the Rules of the Supreme Court because it fails to show that the alleged federal question was timely and properly raised in the Courts below to give this Court jurisdiction to review the Illinois State Court Judgments on Writ of Certiorari 3

3. The alleged federal question of the fairness of a division of property in a divorce action between husband and wife does not raise a federal question on any theory and was not raised in the State Courts below, and is now being raised for the first time in this Court 5

Conclusion 7

LIST OF AUTHORITIES CITED

Cases

City of Chicago v. Shell Oil Co., 29 Ill. 2d 136, 193 N.E.2d 759; certiorari denied, Galbreath v. City of Chicago, 84 S.Ct. 1882, 377 U.S. 977, 12 L. Ed. 2d 746 5

Ellis v. Dixon, 306 N.Y. 981, affirming 118 N.Y.S. 2d 815, 75 S.St. 850, 349 U.S. 458, 99 L. Ed. 1231 6

Galt v. Illinois Commerce Commission, 28 Ill. 2d 501, 503, 192 N.E.2d 906 6

Harnois v. Harnois, 10 Ill. App.3rd 1062, 295 N.E.2d 511 (Petition Leave to Appeal Denied by Supreme Court of Illinois) 4

People v. Hale, 31 Ill. 2d 200, 203, 201 N.E.2d 454 5

People v. Luckey, 42 Ill. 2d 115, 245 N.E.2d 769; certiorari denied, 90 S.Ct. 755, 397 U.S. 943, 25 L.Ed. 2d 122 6

Other Authorities

Rule 19, Par. 1(a), Rule 23(f), Rule 15(e) and Rule 16(b) of the Rules of Supreme Court of United States 2, 3, 5

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FOREWORD.

Petitioner seeks to have this Court review a Judgment for Divorce entered in a State Court making a division of property between a husband and wife after lengthy hearings. No federal issue was ever involved in the divorce proceedings in the State Courts. The Petition for a Writ of Certiorari to the Appellate Court of Illinois should be summarily denied for the reasons hereinafter set forth.

REASONS WHY THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED.

I.

UNDER RULE 19, PARAGRAPH 1(a), OF THE RULES OF THIS COURT, THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE THERE IS NO BASIS FOR THIS COURT TO GRANT FURTHER REVIEW.

Rule 19, Paragraph 1(a) states *inter alia* as follows:

> "1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:
>
> (a) Where a state court has decided a federal question of substance not theretofore determined by this court, or had decided it in a way probably not in accord with applicable decisions of this court."

The Petition for Certiorari on its face shows that the Illinois Courts in this case have decided no federal question of substance, nor have the Illinois Courts decided any question in a way not in accord with applicable decisions of this court. We repeat that no federal question is involved where a court has decided the division of property between a husband and a wife upon facts produced by both parties after a full hearing. The Petitioner is simply unhappy with the property division approved by three Illinois Courts—the trial court, the Appellate Court of Illinois, and the Supreme Court of Illinois.

Petitioner was treated most equitably and fairly. Her real complaint is that a jury decided that her husband, the Respondent, was entitled to a divorce from her against her strenuous opposition. She has been making a career of filing appeals to harass and irritate her former husband and compel him to spend money contesting unwarranted appeals.

The Petitioner, who is filing her Petition for Certiorari, *pro se,* simply does not understand that this Court will not review factual situations from State Courts where no federal questions are involved and where their rulings depend upon the credibility of witnesses. The trial judge is, of course, the sole judge of the credibility of witnesses.

Even a cursory examination of the Petition for Certiorari shows that there is no federal question involved. No federal question was raised in the Courts below, and no federal question was passed on in the Courts below. Therefore, there is nothing for this Court to review.

II.

THE PETITION FOR CERTIORARI DOES NOT COMPLY WITH RULE 23(f) OF THE RULES OF THIS COURT BECAUSE THE PETITION FAILS TO SHOW THAT THE ALLEGED FEDERAL QUESTION WAS TIMELY AND PROPERLY RAISED SO AS TO GIVE THIS COURT JURISDICTION TO REVIEW THE STATE COURT JUDGMENT ON A PETITION FOR A WRIT OF CERTIORARI.

Rule 23(f) of the Rules of the Supreme Court provides:

> "If review of the judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings in the court of the first instance and in the appellate court, at which, and in

the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e.g., by a pleading, by request to charge and exceptions by assignment of error); and the way in which they were passed upon by the court; with such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (e.g., ruling on exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on writ of certiorari."

The Petition in this case shows conclusively (1) that the questions sought to be raised now for the first time were not raised in the courts below; (2) that no federal questions were ever timely or properly raised; and (3) that the Petition on its face shows that there are no federal issues or questions even raised now to give this court jurisdiction. (See Appellate Court Opinion 10 Ill. App. 3rd 1062, 295 N.E.2d 511, Petition for Writ of Certiorari, Appendix A, pages 1a to 13a).

All that Petitioner contends is that the State Courts held contrary to what she would have decided if she were the judge. She is angry that the State Courts held that the Respondent was entitled to certain property. In every law suit, someone wins and someone loses. But just because someone loses does not raise a federal issue. Petitioner had fair, lengthy, impartial hearings before three State Courts and all three courts decided in favor of the Respondent on the evidence. Petitioner disagrees with all three courts but her disagreement cannot raise a federal question especially where no constitutional or federal question was raised in the courts below. Now Petitioner says that she has been denied due process of

law and equal protection of the laws as set out in the Fourteenth Amendment. After a full hearing before three State Courts it is difficult to see how such a contention can be seriously advanced.

Even if this were an appeal from a State Court, rather than a Petition for Certiorari, the appeal would have to be dismissed for failure to comply with Rule 15(e) and Rule 16(b) of the Rules of this court. On the very face of her Petition, there are no grounds for this court to take jurisdiction and the Petition for a Writ of Certiorari should be denied without further ado.

III.

EVEN IF THERE WERE A CONSTITUTIONAL OR FEDERAL QUESTION INVOLVED (WHICH THERE IS NOT) SUCH QUESTION COULD NOT BE CONSIDERED BY THIS COURT BECAUSE IT WAS NOT RAISED IN THE STATE COURTS BELOW AND IS BEING RAISED IN THIS COURT FOR THE FIRST TIME.

There is a fundamental principle of appellate review, namely, that constitutional issues not raised in the trial court cannot be presented for the first time on appeal.

As stated in *People* v. *Hale,* 31 Ill. 2d 200, at 202, 201 N.E. 2d 454:

> "We have frequently stated the rule that constitutional questions not presented to, and ruled on by, the trial court, will not be considered on review."

To the same effect is *City of Chicago* v. *Shell Oil,* 29 Ill. 2d 136, 193 N.E.2d 759, certiorari denied, *Galbreath* v. *City of Chicago,* 84 S.Ct. 1882, 377 U.S. 977, 12 L.Ed. 2d 746.

Just as the constitutionality of a statute cannot be challenged in a reviewing court unless it is raised or

passed upon in a trial court, so must any federal or constitutional question be raised in, presented to, and ruled upon in the trial court before it can be considered on review. *Ellis* v. *Dixon,* 306 N.Y. 981, affirming 118 N.Y.S. 2d 815, 75 S.Ct. 850, 349 U.S. 458, 99 L.Ed. 1231. *People* v. *Luckey,* 42 Ill. 2d 115, 245 N.E. 769; certiorari denied, 90 S.Ct. 755, 397 U.S. 942, 25 L.Ed.2d 122.

As said in *Galt* v. *Illinois Commerce Commission,* 28 Ill. 2d 501, at 503, 192 N.E. 2d 906:

> "Unless the question is first raised and decided below there is nothing for this court to review."

Applying the foregoing words *mutatis mutandis* to the case at bar, there is nothing for this court to review.

Nowhere in the State trial court, the Appellate Court of Illinois, or the Supreme Court of Illinois did Petitioner raise any federal or constitutional issue.

A mere reading of the Appellate Court Opinion and the very arguments advanced by the Petitioner show conclusively that no constitutional question was raised, argued, or passed upon in any of the three courts below. (See Appellate Court Opinion, Petition for Certiorari, Appendix, pages 1a to 13a).

There must be an end to litigation. This Petitioner in this very case has taken a prior appeal to the Appellate Court of Illinois. and a prior appeal to the Supreme Court of Illinois, to reverse the judgment of divorce. She lost in both instances. Five courts have passed on her several appeals and the Transcript of Record so shows. She is making a career out of harassing her former husband and prosecuting frivolous appeals without any basis in law, or in fact, or in common sense.

CONCLUSION.

Hence, for the reasons hereinabove assigned, it is most respectfully urged that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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